

DEPARTMENT OF STATE REVENUE

AUDIT-GRAM NUMBER IR-004

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NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

Durable Medical Equipment.

Authority: IC 6-2.5-5-18; IC 16-42-19-5; IC 6-2.5-1-18; 45 IAC 2.2-5-27; Information Bulletin # 48, 7/10/84; Sales Tax Clarification Letter, 1/04.

IC 6-2.5-5-18. Sales... of medical equipment, supplies and devices.

(a) Sales of... medical equipment, supplies, and devices are exempt from the state gross retail tax, if the sales are prescribed by a person licensed to issue the prescription.
[1980]

45 IAC 2.2-5-27. Medical exemptions; definitions.

(a) The term "person licensed to issue a prescription" shall include only those persons licensed or registered to fit and/or dispense such devices.
[1982]

"Person licensed to issue a prescription" **means** only those persons licensed or registered to fit and/or dispense such devices.

[Temporary Regulations 2004]

IC 6-2.5-1-18. "Durable medical equipment" defined [effective January 1, 2004].

"Durable medical equipment" means equipment...that:

- (1) can withstand repeated use;
- (2) is primarily and customarily used to serve a medical purpose;
- (3) generally is not useful to a person in the absence of illness or injury; and
- (4) is not worn in or on the body.

[2003]

I. POLICY PRIOR TO JANUARY 1, 2004

Prior to January 1, 2004, hot tubs and tanning beds prescribed by a licensed practitioner may be purchased exempt from sales tax. The following definitions provide

guidance in determining if the item has been prescribed by a licensed practitioner and, therefore, qualifies for exemption from sales tax:

A. "PRESCRIPTION" DEFINED

IC 16-42-19-7 "Prescription" defined.

"[P]rescription" means...

- (1) a written order to or for an ultimate user for a drug or device containing the name and address of the patient, the name and strength or size of the drug or device, the amount to be dispensed, adequate directions for the proper use... name of the practitioner, issued and signed by a practitioner; or
- (2) an order... reduced to writing by the pharmacist.

[1993]

The above terms "Drug" and "Device" are further defined in IC 25-26-13-2.

B. "PRACTITIONER" DEFINED

IC 16-42-19-5. "Practitioner" defined.

"[P]ractitioner" means...

- (1) A licensed physician... (IC 25-22.5).
- (2) A veterinarian... (IC 15-5-1.1)
- (3) A dentist... (IC 25-14).
- (4) A podiatrist... (IC 25-29).
- (5) An optometrist... (IC 25-26-15).
- (6) An advanced practice nurse...(IC 25-23-1-19.5).

[1993]

The term "practitioner" licensed to issue a prescription also includes a Doctor of Osteopathy (D.O.). [See IC 25-22.5-1-1.1(a)(1)(B)].

II. POLICY EFFECTIVE JANUARY 1, 2004

Under Indiana Code 6-2.5-1-18, effective January 1, 2004, recreational hot tubs and tanning beds are not considered to be primarily used to serve a medical purpose. They are subject to the collection of sales tax whether or not prescribed by a licensed practitioner.

Durable medical equipment is defined under Indiana Code 6-2.5-1-18 to be an item that "... (2) is primarily and customarily used to serve a medical purpose; (3) generally is not useful to a person in the absence of illness or injury...." Since both the hot tub and tanning bed are widely used by persons who have not incurred injury or illness, they do not qualify for exemption.